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The following index and digest contain the legal cases which have appeared in THE BANKING LAW JOURNAL during 1961. The entire arrangement, including the number of sections follows the plan of the fifth edition of the BANKING LAW JOURNAL DIGEST. The DIGEST, with Cumulative Supplement to Fifth Edition, contains the digest of more than 10,000 banking decisions which have been published in THE BANKING LAW JOURNAL from the time of its establishment in 1889 down to December, 1961.

AGENTS

§56. Agent's authority.

Where insurer agreed to insure the lives of debtors of bank who were in insurable health under group policy in which bank was irrevocable beneficiary, and where cashier of bank was designated by the insurance company to issue certificates of insurance, the insurance company cannot set up the dual relationship as a limitation upon the authority of the agent to bind the insurer even though cashier knew that debtor was not in insurable health at time he wrote a certificate of insurance. Atlantic National Life Insurance Co. v. Bank of Sulligent, Alabama, 125 So.2d 702. 78 B.L.J. 356.

ALTERED PAPER

§63. Material alterations.

Where maker signed blank note on December 20, 1954 and payee dated it February 18, 1955 and filled in the amount as $1,043.50 rather than the correct amount of $871.50, trial court's judgment that payee was entitled to $871.50 plus interest and attorneys' fees was reversed and judgment was entered that payee take nothing because material change of note rendered it unenforceable. Koonce v. Campbell, Texas, 348 S.W. 2d 272. 78 B.L.J. 993.

§66. Altering place of payment.

Where holder of note filled in blank in note as to place of payment in order to prevent the maker from effecting a change of venue, the change constituted a species of legal fraud which voided the note even though the holder thought it had the right to make the change. Republic National Bank of Dallas v. Strealy, Texas, 343 S.W. 2d 284. 78 B.L.J. 524.

§76. Liability of drawee to drawer.

Where check in amount of $231.50 had been raised to $15,231.50 and name of payee had been altered, drawee's defense to action by depositor that depositor had prepared check in such way that alterations could be made was insufficient. Moore v. First National City Bank, New York, 210 N.Y. Supp. 2d 105. 78 B.L.J. 354.

ASSIGNMENTS

§94. Assignment of bill or note.

Where note was assigned by foreign corporation to attorney's secretary without consideration and for purpose of bringing suit, it was error to dismiss secretary's complaint against makers upon ground that she was not real party in interest and that assignment was designed to avoid requirement that nonresident plaintiff post security for costs. De Cosmo v. Foreman, N.J., 171 A.2d 105. 78 B.L.J. 720.

§94.5. Assignment of accounts receivable.

Where bank loaned $5,000 to subcontractor in reliance upon assignment to it of $5,000 withheld by general contractor from amounts due to subcontractor as certain contract was being performed, bank acquired equitable lien against said funds, and general contractor which

used said funds to pay creditors of subcontractors to detriment of bank was liable for that amount to bank. Carr & Howard Construction Co. v. Panhandle State Bank, Texas, Amarillo, 347 S.W. 2d 793. 78 B.L.J. 907.

§95.7. Assignment for benefit of creditors.

While retention of a use or benefit by a person making an assignment of his property for the benefit of creditors may invalidate the assignment, one who has assented and becomes a party to the assignment cannot attack it or pursue inconsistent remedies even though the assignment may be void or voidable as to other persons. Reynolds v. Burns, Illinois, 170 N.E. 2d 122. 78 B.L.J. 161.

ATTORNEY'S FEES

§109. Provision in instrument for attorney's fees held valid.

Under New York law a provision for a reasonable attorney's fee contained in a note is enforceable, and a sum equal to 20% of the face amount of the note is a reasonable attorney's fee for its collection by suit. General Lumber Corp. v. Landa, 216 N.Y. Supp. 2d 33. 78 B.L.J. 812.

§111. Recovery of attorney's fees.

Usual attorney's fees clause is in nature of contract of indemnity and, if defendant questions reasonableness of stipulated fee, holders of note will be limited to an amount which is reasonable and may be denied any recovery at all for attorney's fees where no expense has been incurred as a result of the default. Where one joint payee incurred none of the legal expense in prosecuting lawsuit on note she was entitled, therefore, to none of the attorney's fees stipulated for in note. Kuper v. Schmidt, Texas, 338 S.W. 2d 948. 78 B.L.J. 162.

In actions against corporate makers and individual guarantor of notes, court held that provision for payment of 20% attorney's fee was reasonable, and did not render notes usurious; in any event, corporate makers could not interpose defense of usury or oral agreement to extend time of payment and individual guarantors could not interpose a defense not available to makers. Franklin National Bank of Long Island v. Bush, 219 N.Y. Supp. 2d 280 and 281 (two cases). 78 B.L.J. 1067.

Where maker defaulted on promissory notes containing provision for the payment of attorney's fees in case the notes were placed in the hands of an attorney for collection, and where maker filed a petition for reorganization under Chapter X of the Bankruptcy Act, the attorney's fees provisions were activated even though the notes were not placed in the hands of an attorney until after the reorganization proceedings had begun. Webster Drilling Co. v. Walker, United States Court of Appeals, 286 F.2d 114. 78 B.L.J. 442.

Where borrower was indebted to bank on note in amount of $62,500 which provided for payment of 10% attorney's fees if note were placed in hands of attorney for collection and where borrower was liable on note except for fact that bank was indebted to borrower in the amount of $67,000 which arose out of same transaction, the borrower was not liable to bank for attorney's fees since, by reason of his offsetting claim, there was nothing due from the borrower to the bank. West Texas State Bank v. Tri-Service Drilling Co., Texas, 339 S.W. 2d 249. 78 B.L.J. 78.

Where cashier embezzled bank funds, bank was entitled to recover from his estate legal fees and auditing expenses incurred by the bank in its successful prosecution against a surety company of an action to recover upon deceased's fidelity bond. Prior Lake State Bank v. Groth, Minnesota, 108 N.W. 2d 619. 78 B.L.J. 585.

Maker of note allowed to offset against assignee of his note amount due on note executed by assignor to order of maker, and after allowance of offset assignee entitled to attorneys' fee of stipulated percentage without proof of its reasonableness. Southwest American Life Insurance Co. v. Dunn, Texas, 344 S.W. 2d 948. 78 B.L.J. 623.

BANKING

§119. State control of banking business.

Where minority shareholder of national bank sought to set aside election of directors on ground that number of directors had been reduced in bad faith from fourteen to seven in order to nullify cumulative voting guaranteed by The National Bank Act, the court held that the power granted it under the New York General Corporate Law to review corporate elections applied to national banks, but it dismissed the petition because majority shareholders had not acted illegally. Stone v. Auslander, 212 N.Y. Supp. 2d 777. 78 B.L.J. 622.

Under Pennsylvania statute authorizing establishment of branch office in same city where principal office is located "if there is a need for banking services or facilities such as are contemplated by the establishment of such branch" determina-

tion of Secretary of Banking and the Department of Banking disapproving application for establishment of branch office in Harrisburg, Pennsylvania affirmed on appeal. Dauphin Deposit Trust Co. v. Meyers, Pa., 164 A.2d 86. 78 B.L.J. 79.

Wisconsin statute which prohibited establishment of branch banks but which allowed continuance of those already in operation was not unconstitutional. State Bank of Drummond v. Nuesse, Wisconsin, 108 N.W. 2d 283. 78 B.L.J. 782.

Shareholder of bank who complained that bank had custom of retaining as its attorney the attorney who suggested or nominated it to act as executor or trustee failed to state cause of action. Fairchild v. Bank of America, California Second District Court of Appeals, 13 Cal. Rptr. 491. 78 B.L.J. 804.

§119.5. Federal control of banking business.

Prohibition contained in Texas Constitution and statute against branch banking does not preclude operation of a national bank on federal military installations. State of Texas v. National Bank of Commerce et al., United States Court of Appeals, Fifth Circuit, 290 F.2d 229. 78 B.L.J. 947.

Where state member bank acquired branch offices formerly operated by a national bank as a result of a merger or consolidation of national bank, Federal Reserve Board had no power to disapprove the operation of those branches under Section 9 of the Federal Reserve Act. Old Kent Bank & Trust Co. v. Martin, United States Court of Appeals, 281 F.2d 61. 78 B.L.J. 53.

Acquisition of shares of stock of insurance agency by bank holding company approved by Board of Governors of Federal Reserve System under Section 4(c)(6) of Bank Holding Company Act of 1956 when there was direct connection between the activities of the insurance agency and the subsidiary banks and when banks under Indiana law were permitted to conduct an insurance business. In re St. Joseph Agency, Inc., Board of Governors of the Federal Reserve System, March 9, 1961. 78 B.L.J. 507.

§120. Constitutionality of regulatory laws.

Bank and Corporation Franchise Tax Act of California which imposes a franchise tax of 4 per cent of their net income upon banks and a percentage of net income in addition based upon the ratio between the personal property taxes paid by other corporations and the net income of those corporations is not discriminatory and is within the restrictions of Section 5219 of the Revised Statutes of the United States. Security-First National Bank v. Franchise Tax Board, Cal., 359 P.2d 625. 78 B.L.J. 533.

Legislation in connection with the liquidation of a bank which would provide for payments to depositors of the distressed bank by assessments on other banks or by payment out of the general funds of the state would violate the New Hampshire Constitution. Opinion of The Justices, N.H., 170 A.2d 125. 78 B.L.J. 720.

§121. Discretion of authorities in issuing charter.

Grant by State Banking Board of a charter to one bank and denial of conflicting application was supported by substantial evidence, and applicant was not deprived of due process where it filed first application and Board rendered its decision granting charter to later filing successful applicant before it rendered decision denying charter to unsuccessful applicant. Farb v. State Banking Board of Texas, 343 S.W. 2d 508. 78 B.L.J. 533.

In suit by state bank to compel United States Comptroller of the Currency to revoke his approval of the establishment of a branch bank, court held that Comptroller's discretion in granting approval was unreviewable and that documents relating thereto in possession of Comptroller could not be obtained by discovery. Community National Bank of Pontiac v. Gidney, Michigan, 192 F. Supp. 514. 78 B.L.J. 612.

Action challenging Comptroller of Currency's approval of establishment of national bank dismissed. Comptroller's exercise of discretion not subject to judicial review. Affiliation of new bank with another national bank did not affect its corporate existence. Camden Trust Co. v. Gidney, United States District Court, District of Columbia, Civil Action No. 2-61. 78 B.L.J. 902.

§127. Practicing law.

Where federal savings and loan association employed attorney whose principal work was the examination of titles to property which was mortgaged to the association as security for its mortgage loans for which a charge to the borrower was made, the association was engaged in the unlawful practice of law and was ordered to cease and desist therefrom. Kentucky State Bar Association v. First Federal Savings & Loan Association, Kentucky, 342 S.W. 2d 397. 78 B.L.J. 442.

§132. Merger and consolidation.

In action by United States to prevent merger of two national banks, court refused to issue temporary restraining order because it found that merger had

progressed too far to avoid irreparable injury to one of banks by issuance of such an order, and because any restraining order would nullify finding of Comptroller of Currency that merger is within public interest. United States v. Continental Illinois National Bank & Trust Co., United States District Court, Sorthern District of Illinois, August 31, 1961. 78 B.L.J. 900.

§136. Doing business in a foreign state.

A provision of the National Bank Act which provides that an action may be brought against a national banking association in any state court located in the county or city in which such association is located does not deprive a state court of its power to entertain an action against a national bank located and doing business in another state. Robertson v. Burnett, Nebraska, 109 N.W. 2d 716. 78 B.L.J. 906.

BANKRUPTCY

§142. Preferences within four months of bankruptcy.

In an action by trustees in bankruptcy against seller of corn to set aside payment as voidable preference where check initially tendered was dishonored and seller was not paid for one month, court stated that the dishonor of the check transformed seller into creditor but held he did not have reasonable cause to believe buyer was insolvent at time he received payment. Engelkes v. Farmers Co-Operative Co., United States District Court, Iowa, 194 F. Supp. 319. 78 B.L.J. 966.

Where bank permitted corporate officer to withdraw funds in corporate account and funds were used by him to make preferential wage payments, bank was not liable to trustee in bankruptcy of corporation because there was no diversion of funds from legitimate corporate purposes and bank owed no duty to creditors of corporation apart from the duty it owed the corporation. Feldman v. Capitol Piece Dye Works, Inc., New York, 185 F. Supp. 426. 78 B.L.J. 38.

§145. Priorities among creditors.

Where Small Business Administration joined a private bank in a loan to small business and the borrower became bankrupt, the Administration's interest in the unpaid balance of the loan was entitled to the priority provided for debts due to the United States even though the Administration had agreed to share any money collected with the private bank. Small Business Administration v. McClellan, Supreme Court of the United States, December 5, 1960. 78 B.L.J. 72.

Where debtor made assignment for benefit of creditors and United States thereafter made an assessment for taxes and where involuntary bankruptcy petition was filed against debtor within four months of assignment, the United States acquired no lien for taxes against property "belonging" to the bankrupt since under New York law the assignee took title to the debtor's property. City of New York v. United States of America, United States Court of Appeals, October 10, 1960. 78 B.L.J. 132.

§178.5. Negotiable instruments generally.

Where bankrupt executed and delivered to petitioning creditor a written guaranty of payment of all obligations of its distributor including obligations on certain notes made by distributor, the assignment of the distributor's notes by petitioning creditor to its wholly owned subsidiary carried with it the guaranty of payment placing assignee in position to assert a claim in bankruptcy against bankrupt and assignee was not itself disqualified as a petitioning creditor because others liable on the notes had not been called upon to pay them. In the Matter of Gibraltor Amusements, Ltd., N.Y., 187 F. Supp. 931. 78 B.L.J. 266.

BONDS

§209. Lost or stolen bonds.

Where stolen bonds had passed through several hands until they reached bank and where bank in response to a subpoena had turned them over to United States Attorney in connection with Grand Jury investigation of the theft, the United States Attorney was entitled to maintain interpleader action when original owner made claim to bonds. Rosenblum v. Gillespie, N.Y., 187 F. Supp. 258. 78 B.L.J. 117.

CHECKS

§277. Cashier's checks.

Where transferee of a treasurer's check was not a holder in due course, transferee was subject to bank's defense that it had paid the underlying obligation because of the fraud of the party who obtained a duplicate treasurer's check after falsely representing that the original had been lost. Whitehead v. American Security & Trust Co., United States District Court, 188 F. Supp. 589. 78 B.L.J. 237.

§281. Holder of check cannot sue drawee bank.

Creditor who took cashier's check in payment of gambling debt was not a

holder in due course thereof, and his suit against the issuing bank for non-payment of the cashier's check was dismissed. Preston v. First State Bank of Amarillo, Texas, 344 S.W. 2d 724. 78 B.L.J. 622.

COLLECTIONS

§329. Title of collecting bank.

Forwarding bank which received drafts drawn on drawer's customer and which forwarded them for collection to bank in which drawer's customers maintained an account did not suffer any loss because of negligence of latter bank in failure to give prompt notice of non-payment since forwarding bank was entitled to charge back its customer. Branch Banking and Trust Co. v. Bank of Washington, North Carolina, 120 S.E. 2d 830. 78 B.L.J. 879.

CONTRACTS

§361. Construction.

Agreement licensing use of Foote Adap-Table System of Accrual Accounting expired with the patent in 1944 and subsequent application of system by bank to assets and accounts of merged banks did not make bank liable to pay license fee to patentee. Starke v. Manufacturers National Bank, United States District Court, Michigan, June 26, 1959. 78 B.L.J. 50.

§364. Liability for damages.

Where drawer at time he delivered checks intended to stop payment of them and where payee later brought action on checks against drawer, payee was not entitled to punitive damages. McDonough v. Zamora, Texas, 338 S.W. 2d 507. 78 B.L.J. 162.

CORPORATIONS

§371. Authority of corporate officers.

Where general manager of corporation borrowed money from bank giving his personal note and when funds were credited to corporation's account and used by corporation, the bank properly appropriated funds in corporate account in payment of debt since the debt was that of the corporation and the note of the general manager was given merely as collateral security. In re Eton Furniture Co., United States Court of Appeals, 286 F. 2d 93. 78 B.L.J. 421.

DELIVERY

§383. Necessity for delivery.

In infant's action to rescind delivery of check to automobile dealer under section 3-207 of Pennsylvania Uniform Commercial Code, court held dealer to be subsequent holder in due course of check where the infant, in payment for an automobile purchased by him from a friend, endorsed and delivered a check to the automobile dealer upon the instructions of the friend who had purchased a car from the dealer. Snyder v. Town Hill Motors, Inc., Pennsylvania, 165 A. 2d 293. 78 B.L.J. 234.

§384. Presumption of delivery.

Where drawer mailed checks to payee who never received the checks or the proceeds thereof and where bank collected proceeds of checks upon forged endorsements, payee acquired title to checks upon their deposit in the mails and he therefore has standing to bring suit against the collecting bank. Bank cannot assert defense that payee, who was not a depositor of bank, negligently failed to maintain certain safeguards which would have prevented loss. Moore v. Gotham Bank, Supreme Court, 207 N.Y. Supp. 2d 516. 78 B.L.J. 265.

DEPOSITS

§390. Relation between bank and depositor.

Bank was not an agent of the seller of securities within meaning of Florida Securities Act where it was aware that seller directed purchasers to make their checks payable to bank and even though bank acted as depository of funds, and bank was not liable to return purchase price of unregistered securities to buyer; nor was bank put on inquiry of possible breach of trust because of prior criminal conviction of seller. Sorenson v. Mac Elrod, United States Court of Appeals, 286 F. 2d 72. 78 B.L.J. 400.

§398. Effect of crediting deposits.

Receiver's complaint against banks on behalf of creditors and policy holders of insurance company which alleged that banks, for purpose of deceiving insurance Commission of Texas, falsely certified that insurance company had certain sums of money on deposit states cause of action on theory that banks were estopped to deny that the sums falsely represented to be on deposit in fact belonged to the insurance company. Wheeler v. American National Bank, Texas, 347 N.W. 2d 918. 78 B.L.J. 906.

§405. Special deposits.

A deposit of corporate funds in return for a certificate of deposit in name of third person is a deposit for a special purpose against which bank may not set off debt due from depositor. R. M. Bourne & Co. v. Peoples Union Bank & Trust Co., Pennsylvania, 172 A.2d 814. 78 B.L.J. 934.

Where bankruptcy receiver overdrew a general account maintained by him in the course of running bankrupt's business pending confirmation of arrangement, bank was allowed to set off amount of overdraft with funds in another account maintained by receiver entitled, "Special Machinery Account" even though receiver could not use that account for general purposes. In the Matter of A. M. Townson & Co., United States Court of Appeals, 283 F.2d. 449. 78 B.L.J. 137.

§425.4. Arkansas.

Decedent who made deposit in name of himself or his granddaughter and thereafter substituted the name of his wife for granddaughter and who retained savings book for the account, from which no withdrawals were ever made, did not create a joint tenancy with granddaughter and granddaughter did not after decedent's death own any of the deposit. Davis v. Jackson, Arkansas, 341 S.W. 2d 762. 78 B.L.J. 356.

§461.1. Rhode Island.

Where by-laws of bank reproduced in passbook stated that no withdrawals could be made without original passbook, bank was liable to joint tenant for funds withdrawn by other joint tenant on basis of duplicate passbook which latter had applied for alone. Griffin v. Centreville Savings Bank, Rhode Island, 171 A.2d 204. 78 B.L.J. 708.

§471. Proving deposit.

A deposit slip and a passbook are in the nature of receipts which constitute only prima facie proof of the deposits indicated thereon and can be explained or contradicted by the bank; and in depositor's action to recover alleged cash deposit of $10,670 shown on deposit slip and passbook, bank sustained burden of showing that depositor had deposited only $6,170 and had been erroneously credited an excess of $4,500. Ash v. Livingston State Bank & Trust Co., Louisiana, 129 So. 2d 863. 78 B.L.J. 719.

§471.1. Adverse claim to deposit.

Where bank had or was chargeable with knowledge that proceeds of certain drafts deposited with it for collection belonged to third parties, bank could not apply proceeds of drafts to an indebtedness of depositor to it and was liable to the third parties for the amount of the drafts. Central Bank and Trust Co. v. Shipman, Florida, 127 So. 2d 706. 78 B.L.J. 534.

Where husband brought action against bank to recover sum in joint savings account with wife, court did not err in holding that wife owned half of funds in account; and even if bank violated Arkansas statutes by allowing wife to withdraw funds from the account during the suit after it had notice of husband's adverse claim to the account, the husband has sustained no loss since the court could have charged husband's half of the account with his indebtedness to the wife, and the complaint should be dismissed against the bank. McGuire v. Benton State Bank, Arkansas, 342 S.W. 2d 77. 78 B.L.J. 442.

In interpleader action brought by bank against two executors, court held that interpleader action is maintainable whenever there are claims of such a nature that plaintiff may be exposed to double liability and it does not matter that the same debt or duty is not claimed, or that the claims of the parties are not derived from a common source or that the plaintiff does not stand perfectly indifferent between the claimants in the position of a stakeholder. Security Mutual Bank & Trust Co. v. Buder, Missouri, 341 S.W. 2d 782. 78 B.L.J. 356.

DISCOUNT

§472.1. Right to discount commercial paper.

Lower court's judgment (77 B.L.J. 964), that diamond wholesaler's discounting of customer notes with non-banking corporation involved the sale of accounts receivable represented by the notes and were not loans secured by the notes in violation of the New York Banking and General Corporation Laws was amply supported by the proof and was affirmed. Sigman v. Claar Bros., Inc., United States Court of Appeals, Second Circuit, 291 F.2d 820. 78 B.L.J. 993.

Where discount company made out promissory note payable to automobile dealer together with chattel mortgage which were executed by purchaser of automobile and where discount company delivered its check to dealer upon latter's endorsement of note and mortgage, discount company made no direct loan to purchaser in violation of banking law. Flatbush Auto Discount Corp. v. McCarthy-Bernhardt Buick, Inc., N.Y., 174 N.E. 2d 749. 78 B.L.J. 720.

EVIDENCE

§478. Admissibility of evidence.

Although parol evidence is not admissible to vary the terms of a note absent an ambiguity in the note, in an action brought by a payee against two makers, one of the makers was allowed to show that he was an accommodation maker and hence not liable to the payee on the note because the parol evidence rule does not preclude the admission of evidence to show that as between the parties there was no contact. Cross v. Miner, Tenn., 338 S.W. 2d 619. 78 B.L.J. 79.

Where maker of note testified that he signed note after being told note was only a memorandum of an existing open account and would not be considered a note, such evidence was inadmissible because it contradicted or varied the terms of the note and, since maker knew that he had in fact signed a note, there was no fraud. Deuchler and Co. v. Hampton, St. Louis Court of Appeals, 339 S.W. 2d 499. 78 B.L.J. 161.

Payment of a note without prepayment clause before maturity does not entitle maker to rebate of unearned interest absent an agreement by holder to rebate or conduct by the holder which reasonably induces the maker to prepay and, in maker's action to recover unearned interest on note, evidence that it was bank's custom to grant rebates on prepayment is admissible to corroborate maker's evidence that bank agreed to grant rebate. Eliasz v. Broadway Bank and Trust Co., N.J., 166 A.2d 166. 78 B.L.J. 266.

In determining capacity in which signatories to note were liable, parol evidence rule was applicable on their motion for summary judgment since the intention of the parties could be gathered from the note itself, and even though loan was usurious to corporate principle obligor, the individuals who were secondarily liable could not raise that defense. Metz v. Taglieri, 215 N.Y. Supp. 2d 263. 78 B.L.J. 719.

In action on a note by a decedent's executor, testimony of makers that they had paid note and cancelled check claimed to have been delivered to decedent in payment were erroneously admitted in evidence because dead man's statute bars evidence of transactions and communications between a deceased person and persons interested in the event. Broward National Bank v. Bear, Florida, 125 So. 2d 760. 78 B.L.J. 357.

§549. Forged paper in general.

In action by drawer of check against collecting bank for monies received from drawee bank on check bearing forged endorsement, the trial court erroneously instructed the jury to ascertain whether the drawer exercised ordinary care in drawing the check because the negligence of the drawer of a check is not controlling and may be immaterial unless it directly and proximately affects the bank in the performance of its duty. Northwest National Bank v. Boecking Construction Co., Oklahoma, 361 P.2d 686. 78 B.L.J. 719.

§550. Liability of bank to depositor where bank pays check bearing forged signature.

Where employee of depositor forged depositor's name to twenty checks over a ten month period drawee bank was not liable to depositor because of depositor's negligence and depositor's failure to give timely notice of the forgeries. Airco Supply Co. v. Albuquerque National Bank, New Mexico, 360 P.2d 386. 78 B.L.J. 514.

§551. Bank held not liable.

In an action by depositor's subrogee against the drawee bank for paying checks bearing forged drawer's signatures, the court held for the drawee bank because of depositor's negligence in dealing with its own internal affairs so as to place one of its officers in a position where he could commit forgeries without detection for several months. National Surety Corp. v. National City Bank, Ohio, 172 N.E. 2d 26. 78 B.L.J. 262.

In action by depositor against bank for paying checks bearing forged signatures of depositor, court held that statute relieving bank of liability from paying such checks unless depositor notifies bank within 60 days of return of vouchers is constitutional. Overlake Homes, Inc. v. Seattle-First National Bank, Washington, 360 P.2d 570. 78 B.L.J. 608.

§557. Where check cashed for stranger.

Where teller of bank cashed a large check bearing a forged drawer's signature for stranger after learning from drawee that there was no account standing in the name of the purported drawer, rule of Price v. Neal did not apply and drawee was allowed to recover for money it mistakenly paid to cashing bank. Mechanics National Bank v. Worcester County Trust Co., Massachusetts, 170 N.E. 2d 476. 78 B.L.J. 225.

§560. Liability of drawee bank to drawer where check paid on forged indorsement.

In action by corporation against bank for paying out on forged payee's endorsements the court held that the form of the account did not control and the bank had notice that the corporation which had caused the account to be set up in the name of another person retained a bene-

ficial interest in the account; the court also held that the corporation's failure to make any investigation which would have prevented the forgeries did not exonerate the bank from its primary responsibility to pay the check to the named payee. McCann Steel Co. Inc. v. Third National Bank, Tenn., 337 S.W. 2d 886. 78 B.L.J. 28.

§572. Depositor's duty to examine returned vouchers and report irregularities to bank.

Where bank after complaint by depositor promised depositor to follow signature card more precisely, depositor was not relieved of the duty of examining his statements and cancelled checks and of notifying the bank within sixty days of any forged checks. Fischer & Associates v. First National Bank, Georgia, 116 S.E. 2d 902. 78 B.L.J. 265.

§580. Drawee held not liable.

Payee of check whose endorsement was forged has no cause of action against innocent drawee bank under contract principles since there is no privity between them, nor does payee have a cause of action against the drawee for conversion. United States Rubber Co. v. Union Bank & Trust Co., District Court of Appeal, California, 15 Cal. Rptr. 385. 78 B.L.J. 994.

§581. Collecting bank held liable.

Where bank accepted certain checks for deposit in personal account of employee of corporate payee who had forged payee's endorsement, unbusinesslike and careless manner in which payee conducted business did not bar its recovery against bank because the conduct of the payee did not contribute to and induce the acceptance of the forged endorsement itself. R. Mars, The Contract Co. v. Massanutten Bank of Strasburg, United States Court of Appeals, 285 F.2d 158. 78 B.L.J. 405.

§583. Collecting bank held not liable.

Payee's complaint against collecting banks was dismissed without leave to replead where payee endorsed bank check payable to his order to non-existent corporation, and where proceeds of check were thereafter collected upon the endorsement of purported agent of the corporation and a guaranty of prior endorsements by collecting banks. Levin v. Union National Bank of Westminster, Maryland, 168 A.2d 889. 78 B.L.J. 605.

§587. Check payable to fictitious payee.

Where drawer's checks were authorized to be paid upon signatures of payroll clerk and comptroller and where payroll clerk made checks payable to former employees, and after signing them, procured signature of innocent comptroller and forged endorsements of payees, the payees of such checks were "fictitious" and the checks were bearer instruments within the meaning of Section 9 (3) of Negotiable Instruments Law. Dorsey v. Houston National Bank, Texas, 338 S.W. 2d 540. 78 B.L.J. 154.

§588. Check delivered to impersonator—rights of drawee bank.

Where group life insurer delivered draft to employer for delivery to widow of deceased employee, and where employer delivered it to impostor, collecting bank's guarantee of prior endorsements did not render it liable to insurance company since guarantee was that person to whom draft was issued had endorsed it, but not that the draft was honestly procured from drawer. General American Life Insurance Co. v. National Bank of Commerce, Texas, 348 S.W. 2d 393. 78 B.L.J. 1046.

§593. Ratification of forgery.

Where wife signed her own and husband's name on notes in order to finance improvements on their home, husband who was without knowledge of the execution of the notes, was not liable on the notes even though he was aware of the contracting work going on about the premises and even though he accepted the benefit of the home improvements. Schenectady Trust Co. v. Castelli, 209 N.Y. Supp. 2d 739. 78 B.L.J. 357.

FRAUD

§598. Instrument obtained by fraud.

Fraud in the factum not sustained as a defense where maker was aware that he was signing a negotiable instrument although he was allegedly deceived as to the amount of the note and the identity of the payee since he failed to exercise the "unusually high degree of care" required of him in the circumstances. Bancredit, Inc. v. Bethea, N.J., Appellate Division, 172 A.2d 10. 78 B.L.J. 939.

Fraud in the factum is a defense, available against a holder in due course of a negotiable instrument provided the maker were not negligent in failing to ascertain the actual character of the instrument and maker has burden of proving freedom from negligence since it is an integral part of the defense of fraud. New Jersey Mortgage & Investment Co. v. Dorsey, N.J., 165 A.2d 297. 78 B.L.J. 232.

In suit by makers of promissory note against assignee for cancellation of note where payee had procured note by fraud,

makers were entitled to cancellation and had no duty to make restitution to assignee of benefits received. Fleming v. Kagan, California District Court of Appeal, 11 Cal. Rptr. 737. 78 B.L.J. 534.

In action by holder in due course on promissory note, defense of fraud in the factum by co-makers not sustained, and it did not matter that payee filled blank with greater amount than that authorized by co-makers. A jury question was presented as to the infant co-maker, as to whether the automobile for which the note was given was a necessary. Bancredit, Inc. v. Bethea, N.J., 168 A.2d 250. 78 B.L.J. 591.

Fraud of husband in inducing wife to execute a mortgage will not invalidate it as against mortgagee unless latter participated in or knew of fraud, and even though mortgagee was aware that wife "gratuitously" guaranteed and secured her husband's loan, obtained through the medium of a corporate transaction, it would not be obligated to inquire whether husband was committing fraud on wife. Lesser v. Strubb, N.J., 171 A.2d 114. 78 B.L.J. 812.

§598.1. Debt not dischargeable because of fraud.

Bankrupt granted discharge from his debts even though his verified petition and statement of affairs contained false statements. The bankrupt's truthful testimony at the first meeting of creditors did not cure the false statements but it was properly considered in determining whether the false statements were fraudulent. In re Tabibian, United States Court of Appeals, Second Circuit, 289 F.2d 793. 78 B.L.J. 811.

GUARANTY

§616. Construction of contract of guaranty.

In bank's suit on guaranty of all indebtedness, court held that guaranty covered principal's liability as endorser even though he was characterized throughout the guaranty as "borrower" since this was term of convenience and was not intended to define the extent of the guaranty. Fannin State Bank v. Grossman, Illinois, 175 N.E. 2d 268. 78 B.L.J. 987.

Guarantor who signed security agreement note in which he waived receipt of notice nonetheless was entitled to notice of cancellation of insurance policy where it was custom or usage of trade to give such notice. Provident Tradesmen's Bank and Trust Co. v. Pemberton, Pa., 173 A.2d 780. 78 B.L.J. 1049.

HOLDERS IN DUE COURSE

§628. Payee as holder in due course.

Whether payee of promissory note is holder in due course and free of personal defenses depends upon whether he took note as a purchaser or as a mere promisee. Greenberg v. Glattke, Supreme Court of Michigan, 104 N.W. 2d 775. 78 B.L.J. 78.

§630. Holder must take without notice of defect.

Where makers of note failed to submit any factual evidence to support assertion in opposing affidavits that alleged holder in due course took note with knowledge of its conditional delivery, no genuine issue of fact was raised and holder was entitled to summary judgment. New Jersey Mortgage & Investment Corp. v. Calvetti, N.J., 171 A.2d 321. 78 B.L.J. 954.

In action by purchaser of note against maker who asserted that instrument had been obtained by fraud and that purchaser was not holder in due course, court reversed jury verdict for maker and directed entry of judgment for holder of note. Securities Investment Co. v. Cohen, Mississippi, 131 So. 2d 439. 78 B.L.J. 994.

Where payee procured note by false and fraudulent inducements, transferee of such note which made no inquiry was not holder in due course because it was aware of a series of complaints against the payee with respect to its business practices and other notes given in similar transactions. Gramatan National Bank & Trust Co. v. Beecher, Vermont, 173 A.2d 163. 78 B.L.J. 994.

§631. Where holder is not charged with notice.

An endorser of a trade acceptance which was otherwise complete and regular but had printed thereon the words, "Trade Acceptance" and "The transaction which gives rise to this instrument is the purchase of goods by the acceptor from the drawer," was not on notice of any infirmity in the instrument so as to lose his status as a holder in due course. Equitable Discount Corp. v. Guest, Georgia, 118 S.E. 2d 864. 78 B.L.J. 533.

§632. Purchaser held put on notice.

In suit by bank against maker on promissory note, court held that defense of lack of consideration was available against bank because three months before note was negotiated to bank, the bank was advised by the maker that he had been tricked by the payee, and the bank was deprived of its status as holder in due course even though when note was negotiated to bank it acted in good faith hav-

ing forgotten the notice. First National Bank of Odessa v. Fazzari, 212 N.Y. Supp. 2d 380. 78 B.L.J. 529.

In action against bank for conversion of United States Treasury certificate of indebtedness, the court held that trial judge properly refused to direct a verdict for the bank and that there was sufficient evidence to warrant submitting to the jury the question of the bank's good faith. Elbar Realty Inc. v. City Bank & Trust Co., Massachusetts, 173 N.E. 2d 256. 78 B.L.J. 794.

§645. Crediting proceeds to customer's account held to be value.

Complaint which alleged that bank of deposit permitted depositor to withdraw proceeds of check credited to his account prior to the receipt of notice by the bank of deposit that payment had been stopped, stated good cause of action against drawer of checks. Iola State Bank v. Kissee, Oklahoma, 363 P.2d 368. 78 B.L.J. 984.

INCOMPLETE INSTRUMENTS

§662. Implied authority to fill in blank spaces.

In a suit by payee of note against co-makers, where the uncontradicted testimony of co-makers was that they signed note in blank and authorized its completion for a specific amount, payee by failing to call its manager to testify did not sustain its burden of proving that note, which was filled in for a greater amount, was completed within authority conferred by co-maker and latter were liable to payee for that amount actually authorized. Home Finance Service v. Black, Court of Appeals of Louisiana, Third Circuit, 131 So. 2d 547. 78 B.L.J. 907.

INDORSEMENTS

§674. Form of indorsement.

Contracts of endorsement and guaranty are separate and distinct obligations from obligation contained in note itself, and addition of abbreviation, "Pres." to endorser's and guarantor's signature without disclosure of name of principal did not exempt endorser or guarantor from personal liability where front of note disclosed principal to be maker of note. Gross v. Lamme, Nevada, 361 P.2d 114. 78 B.L.J. 623.

§690. Release of indorser.

In suit by bank as payee of note against indorser, defense that maker had entered into a common-law composition agreement with its creditors including the bank and that bank had failed to reserve its right of recourse against the indorser was insufficient because the composition agreement had yet to be fully performed. Lamothe and Young, Inc. v. Vehs, Connecticut, 167 A.2d 709. 78 B.L.J. 441.

INSURANCE

§712. Liability on policies in general.

Where used car dealer financed purchases of used cars by loans from bank against which he delivered notes and chattel mortgages, banker's blanket bond did not cover losses suffered by bank upon non-payment of notes where dealer did not own and possess the cars described in the chattel mortgages. State Bank of Poplar Bluff v. Maryland Casualty Co., United States Court of Appeals, Eighth Circuit, 289 F.2d 544. 78 B.L.J. 788.

§713. Liability on policies in general—forgery insurance.

In an action brought by a bank against an insurance company, court held that false and fraudulent invoices taken by the bank as security for a loan were not within scope of an insurance bond which protected the bank from loss occasioned by acceptance of forged or counterfeited documents. United States Fidelity and Guaranty Co. v. First National Bank, Colorado, 364 P.2d 202. 78 B.L.J. 1041.

§731. Rights of surety to subrogation.

In action by fidelity insurer against collecting bank which cashed checks payable to insured upon unauthorized endorsements, court held that insured's receipt of payment for loss from insurer did not constitute an election of remedies which barred insurer's claim against collecting bank, and that equities as between insurer and bank were in favor of insurer. Aetna Casualty & Surety Company v. Lindell Trust Company, St. Louis Court of Appeals, 348 S.W. 2d 558. 78 B.L.J. 1068.

LETTERS OF CREDIT

§766. Letters of credit.

Bank which paid draft drawn against letter of credit confirmed by it was entitled to summary judgment in suit by corporation which purchased the letter of credit since bank's obligation to pay was irrevocable and it had neither right nor obligation to enter into controversies between the beneficiary and the party procuring the letter of credit. Dulien Steel Products v. Bankers Trust Co., N.Y., 189 F. Supp. 922. 78 B.L.J. 344.

Where bank made payment against letter of credit upon receiving documents which showed non-conforming merchandise, buyer's agent had no cause of action against bank for lost brokerage commissions because buyer's cancellation of its commitments under second and third letters of credit were caused by seller's breach of contract and was not natural and probable result of bank's breach of conditions of first letter of credit. Linden v. National City Bank of New York, 208 N.Y. Supp. 2d 182. 78 B.L.J. 242.

LIEN AND SET OFF

§821.2. Priority of liens.

Lender who took assignment of accounts receivable as security for loan acquired lien which was inferior to subsequently created lien of United States for taxes because it was not perfected or "choate." United States v. Crest Finance Co., U. S. Court of Appeals, Seventh Circuit, 291 F.2d 1. 78 B.L.J. 1055.

§821.3. Effect of filing.

Document denominated as a conditional sales contract was a mortgage within meaning of Section 6321 of Internal Revenue Code, and lien created thereby was superior to federal tax lien although such document was not recorded until after the notice of tax lien was filed. Gauvey v. United States, United States Court of Appeals, 8th Circuit, 291 F.2d 42. 78 B.L.J. 1068.

LOAN AND DISCOUNT

§822. Liabilities of parties.

Where a savings bank made loans on the credit of two name promissory notes which satisfied statutory requirements, the taking of collateral which was not authorized by the statute as additional security did not invalidate the loans. Peterborough Savings Bank v. King, N.H., 168 A.2d 116. 78 B.L.J. 534.

MAKER

§831. Liability of maker.

A discharge of a debt in bankruptcy is not an extinguishment of the debt but merely a bar to its enforcement by legal proceedings, and holder of note has burden of proving in suit on promissory note that debt was excepted from operation of discharge in bankruptcy. Question whether suit on debt is barred or is within an exception of Section 17 of the Bankruptcy Act is ordinarily left to the court in which the suit on the debt is brought. National Finance Co. v. Valdez, Utah, 359 P.2d 9. 78 B.L.J. 441.

Bank entitled to summary judgment against maker of notes since alleged oral agreement varying unconditional obligations of notes cannot be availed of as a defense, and public policy requires that person executing an instrument constituting an obligation to a bank be estopped from enforcing an oral agreement not to enforce it according to its terms. Manufacturers Trust Co. v. Palmer, 215 N.Y. Supp. 2d 840. 78 B.L.J. 811.

Bank entitled to summary judgment in suit on note against co-maker although bank filled in blanks as to date and amount without co-maker's knowledge. Co-maker not relieved of liability although bank did not procure signature of additional co-maker where there was a blank space on the note for such signature and where it was co-maker's understanding that another co-maker would sign since, as a matter of law, the signature of an additional co-maker was not a condition precedent to his liability. First National City Bank v. Folsom, 206 N.Y. Supp. 2d 950. 78 B.L.J. 161.

MATURITY

§840. Construction of note with reference to time of maturity.

Where mortgagee of truck-tractor had right of repossession if it deemed itself insecure about buyer's repayment of note for balance of purchase price, the mortgagee's acceptance of a check for three overdue installments of the note rendered his subsequent repossession of the vehicle a conversion. Colorado Kenworth Corp. v. Whitworth, Colorado, 357 P.2d 626. 78 B.L.J. 244.

MORTGAGES

§865. Necessity for filing.

Michigan chattel mortgage was valid against claim of trustee in bankruptcy where mortgage was executed over five months prior to bankruptcy but was not recorded for four days after execution and where, under Michigan law, a creditor who had extended credit during the four-day period could have taken prior to the mortgage—because the rights of the creditors to which trustee succeeds under Section 70(c) of the Bankruptcy Act are ascertained at date of bankruptcy, not at an anterior time. Lewis v. Manufacturers National Bank, Supreme Court of the United States, 81 Sup. Ct. 347. 78 B.L.J. 252.

§874. Validity of chattel mortgage.

Where owner of trailer delivered it to another on consignment and latter obtained loan from bank secured by chattel mortgage on trailer and thereafter defaulted on mortgage, owner was not estopped to deny ownership by putative mortgagor, and the bank was not entitled to possession of the trailer. Linton v. Citizen's State Bank, Oklahoma, 361 P.2d 1071. 78 B.L.J. 979.

§876. Mortgage of stock of merchandise.

Chattel mortgage on shifting stock of goods may become fraudulent if mortgagee knowingly permits mortgagor to appropriate to his own use funds which should have been applied to the mortgage, but the failure of mortgagor to enforce provision of mortgage for monthly accounting did not invalidate mortgage. United States Rubber Co. v. Young, Washington, 359 P.2d 315. 78 B.L.J. 425.

NATIONAL BANKS

§908. Holding real estate.

Unexpired portion of lease executed by national bank may be set aside upon suit by bank where lease is ultra vires as in violation of Federal statutes relating to power of national bank to hold realty, to invest in bank premises and to limitation on indebtedness incurred by national bank. Perth Amboy National Bank v. Brodsky, N.Y., 185 F. Supp. 217. 78 B.L.J. 41.

NEGLIGENCE

§930. Liability for negligence.

In action brought by depositor against bank for damages for loss of thumb which was caught in bank's night depository, court affirmed judgment for bank notwithstanding jury verdict for depositor because latter failed to prove that bank was guilty of negligence and it appeared that accident was due to depositor's own fault. Mortensen v. First Security Bank Utah, 363 P.2d 75. 78 B.L.J. 906.

Where bank patron fell on polished floor constructed of smooth and glossy material, bank was not liable since plaintiff showed no unusual condition of the construction or surface of the floor and no variation of surface conditions between area of her fall and other portions of the public quarters of the bank over which she had walked and others were walking. Yearsley v. City Bank, Michigan, 106 N.W. 2d 162. 78 B.L.J. 158.

NOTICE OF DISHONOR

§1006. By whom notice to be given—agent.

Bank which acted as agent for collection of notes and which gave notice of dishonor to its principal, to maker and to some but not all indorsers was not liable to its principal for not having given notice to all the indorsers. M.G.M. Concrete Corp. v. State Bank of Long Beach, 215 N.Y. Supp. 2d 981. 78 B.L.J. 812.

OFFICERS AND EMPLOYEES OF BANKS

§1067. Liability of officers in general.

Indictment charging bank officer with paying check knowing there were insufficient funds in drawer's account and with charging check to a Deferred Items Account rather than drawer's account sufficiently charged a violation of 18 U.S.C. §656 since placing overdrawing items in a deferred items account without immediately charging them to the account on which they are drawn is not a normal way of handling overdrafts. United States of America v. Vannatta, United States District Court, Hawaii, 189 F. Supp. 939. 78 B.L.J. 357.

§1095. Liability of bank for cashier's act.

Cashier's agreements in all matters relating to routine of bank's business bind the bank to the same extent as if they had been entered into by resolution of board of directors and admission of cashier that bank was liable on an account of predecessor bank was within his power and binding upon bank. Dennehy v. Maycourt Realty Company, Rhode Island, 167 A.2d 556. 78 B.L.J. 441.

PAYMENT

§1208. Payment in general.

In action against bank on cashier's check which it issued by mistake in exchange for check drawn on itself on which payment had been stopped, court held for payee of cashier's check because bank could suffer no loss for payment of its depositor's check over stop order because of exculpatory language contained therein. Rosenbaum v. First National City Bank of New York, 213 N.Y. Supp. 2d 513. 78 B.L.J. 714.

Where note was payable from proceeds of mortgage loan in the event building was constructed, answer stated valid defense that makers were not liable to payee on note on ground that note was payable only from a particular fund which

never became available for reasons not attributable to the makers. Marina Apts., Inc. v. Bloch, Florida, Third District, 128 So. 2d 615. 78 B.L.J. 623.

When bank received written instructions to effect payment to a certain person but paid a different person with a similar name, bank was negligent in failing to find intended payee among its depositors, in not making reasonably certain that person to whom it paid money was intended payee and in not seeking further instructions from sender, and was liable for such mispayment even though there was an ambiguity in sender's instructions. Thurm v. Sidney Schupper, 204 N. Y. Supp. 2d 537. 78 B.L.J. 67.

§1210. Liability of drawee.

A drawee bank which charged back the amount of two checks five days after receipt was liable to the payee for the amount of the two checks since drawee's failure to revoke the credit it gave before midnight of day following receipt of the checks constituted irrevocable payment under the Indiana Deferred Posting Act, and Section 7 of Indiana Bank Collection Code is not to the contrary. First National Bank v. Universal C. I. T. Corporation, Indiana, 170 N.E. 2d 238. 78 B.L.J. 120.

§1225. Payment to unauthorized persons.

Bank which paid checks drawn by town supervisor was liable for his misappropriation of town funds because there had been no compliance with statute relating to expenditure of town funds. American Surety Co. v. St. Lawrence County National Bank, 218 N.Y. Supp. 2d 744. 78 B.L.J. 1067.

§1244. Payment of unendorsed checks.

Payee of two checks had no cause of action against drayer for negligently misdelivering checks to company which ultimately received proceeds because it will have suffered no loss until it fails in its efforts to collect proceeds from collecting bank. Denver Electric & Neon Service Corp. v. Gerald H. Phipps, Inc., Colorado, 354 P.2d 618. 78 B.L.J. 44.

§1257. Check as payment.

A check is not payment of a debt unless received as such by express agreement and a debt is not discharged until check is paid in due course; therefore, where mortgagor did not have sufficient funds on deposit to cover check sent for installment payment on mortgage, mortgagor was in default and mortgagee was within its rights in seizing automobile. Gill v. Mercantile Trust Company, St. Louis Court of Appeals, 347 S.W. 2d 420. 78 B.L.J. 907.

PLEDGE AND COLLATERAL

§1273. Pledge of corporate stock.

Where bank listed notes secured by pledge of stock as unsecured, successful bidder who acquired notes at auction sale was not entitled to pledged property because sale of notes as unsecured constituted a waiver of the pledge. In re Liquidation of Hibernia Bank & Trust Company, Louisiana, 130 So. 2d 547. 78 B.L.J. 716.

Bank which loaned money to known ex-convict by using name of nominee in order to deceive state banking department and which accepted stock from ex-convict to secure loan was a bona fide purchaser of the pledged stock; the criminal record of the borrower and the bank's deceit did not deprive it of the protection of the Uniform Stock Transfer Act or put it on notice that the shares might have been invalidly issued to the borrower. Twinlock, Inc. v. Continental Thrift, Delaware, 167 A.2d 735. 78 B.L.J. 409.

§1280. Application of collateral.

Where decedent guaranteed loan of corporation of which he was sole stockholder and delivered collateral to bank in amount of $35,000 and where upon decedent's death loan was in amount of $23,250 and there was $7,141.49 in corporation's bank account, the latter account was applied to United States claim against corporation for taxes under doctrine of marshalling of assets. Estate of Samuel Stein, 206 N.Y. Supp. 2d 488. 78 B.L.J. 114.

Payee of notes had power to resort to collateral in event of default or to seek first the recovery of the loan through an action on the notes while preserving the collateral; but assignee of notes and collateral who acquired guarantors' equity of redemption in collateral for nominal sum at execution sale had duty to look first to the collateral. Chris v. International Export & Import Corp., 219 N.Y. Supp. 2d 314. 78 B.L.J. 1067.

Where life insurance policy was assigned to bank as security for notes executed by insured and accommodation comaker, bank was entitled to insurance funds upon death of maker and beneficiary of policy was not entitled to recover amount of policy from co-maker. Street v. Lincoln National Life Insurance Co., Kansas City Court of Appeals, 347 S.W. 2d 455. 78 B.L.J. 1068.

RECORDS OF BANK

§1346.3. Legal process to examine.

In extradition proceeding brought by

Venezuela, subpoenas directing banks to produce certain specified records to enable Venezuela to procure evidence as to the amount the accused had on deposit were quashed inasmuch as such evidence was not necessary to proof of prima facie extradition case. First National City Bank v. Aristeguieta, United States Court of Appeals, 287 F.2d 219. 78 B.L.J. 622.

Subpoenas modified so as to delete requirement that New York agencies of Canadian banks produce bank records physically located outside United States in proceeding pending in United States District Court for the Southern District of New York where procedure available for securing desired evidence by letters rogatory. Ings v. Ferguson, United States Court of Appeals, 282 F.2d 149. 78 B.L.J. 108.

SAFE DEPOSIT COMPANIES

§1350. Liability of company to customer.

In suit by lessee of safe deposit box against bank for value of certain securities allegedly placed in the box, the bank was not liable because it showed upon all the circumstances that it had used proper care, and the lessee failed to prove the fact of deposit or that bank had breached its contract of bailment. Farnum v. Connecticut Bank & Trust Co., Connecticut, 168 A.2d 168. 78 B.L.J. 600.

SAVINGS AND LOAN ASSOCIATIONS

§1358.2. In general.

Association of Wisconsin bankers, four state chartered banks and national bank had standing to contest validity of regulations promulgated by Federal Home Loan Bank Board on theory that they had exclusive right to conduct banking business in Wisconsin and that such right had been invaded by federal savings and loan associations which have been illegally conducting banking business in Wisconsin since promulgation of regulations in 1949. Wisconsin Bankers Association v. Robertson, United States District Court, District of Columbia, 190 F. Supp. 90. 78 B.L.J. 434.

Exemption from taxation in Federal Home Loan Bank Act of 1932 for "advances" of Federal Home Loan Bank prohibits imposition by state of South Carolina of documentary stamp taxes on promissory notes issued by a Federal Savings and Loan Association to order of Home Loan Bank to cover loans. Laurens Federal Savings and Loan Association v. South Carolina Tax Commission, Supreme Court of the United States, March 20, 1961. 78 B.L.J. 429.

The franchise of a savings and loan association is a valuable property right and group of associations had right to challenge the action of banking commission in granting a charter to another association, including the right of judicial review of his action even though the applicable statute does not provide for judicial review. Brazosport Savings and Loan Association v. American Savings and Loan Association, Texas, 342 S.W. 2d 747. 78 B.L.J. 414.

Statute which exempts payments from Veteran's Administration from claims of creditors applies to such payments in the hands of the veteran or on deposit in a bank but the payment of such moneys into share accounts of a federal savings and loan association subjects them to attachment by a creditor of the veteran because the acquisition of such share accounts is an investment rather than a deposit in a bank. Aetna Casualty and Surety Co. v. Porter, United States Court of Appeals, District of Columbia Cir. July 13, 1961. 78 B.L.J. 1060.

An order of Banking Commissioner denying application of savings and loan association to operate a branch office upon ground that public convenience would not be provided thereby was set aside as not supported by substantial evidence, and another order of Commissioner, denying such an application, was affirmed. Falkner v. Gibralter Savings Association, Texas, 348 S.W. 2d 467 and 472 (two cases). 78 B.L.J. 993.

The grant or denial of an application for a charter for a federal savings and loan association is a matter committed to the discretion of the Federal Home Loan Bank Board and applicants denied a charter were not entitled to judicial review of the Board's action. Federal Home Loan Bank Board v. Rowe, United States Court of Appeals, 284 F.2d 274. 78 B.L.J. 266.

STATUTE OF LIMITATIONS

§1406. Suspension of statute.

Debtor's acknowledgement of indebtedness to bank in letter within period of statute of limitations tolled statute as to indebtedness and to deed of trust securing debt and bank's foreclosure sale of property subject to deed of trust was valid. Temples v. First National Bank of Laurel, Mississippi, 123 So. 2d 852. 78 B.L.J. 78.

§1407. Waiver of statute.

Where note bore corporation's type-

written signature followed by president's written signature, president was personally liable on note but suit against him was barred by statute of limitations. Suit against corporation was also barred by statute of limitations where note was not carried as a current item payable in the books of the corporation even though president testified at trial that corporation owed the money represented by the note. Cockrell v. Craugh, Texas, 338 S.W. 2d 516. 78 B.L.J. 79.

TAXATION

§1510. State tax on national bank shares.

Michigan tax system imposting tax at higher rate on shares of national banks than on shares in savings and loan associations does not violate Section 5219 of the Revised Statutes of the United States because in practical effect the difference in treatment does not result in a discrimination unfavorable to the holders of shares of national banks. Michigan National Bank v. State of Michigan, Supreme Court of the United States, March 6, 1961. 78 B.L.J. 333.

TRAVELER'S CHECKS

§1559. Traveler's checks.

Bank which gave blank traveler's checks to travel agency entered into bailment relationship with travel agency and when checks were stolen from agency and later paid by bank, bank could not recover from agency because the checks when stolen were incomplete and undelivered instruments and could not create a valid contract in the hands of any holder. First National City Bank v. Fredericks-Helton Travel Service, 209 N.Y. Supp. 2d 704. 78 B.L.J. 257.

UNIFORM COMMERCIAL CODE

§1562.5. Uniform commercial code.

Kentucky Uniform Commercial Code is plenary and exclusive, and provisions thereof creating non-possessary security interest by recordation of financing statement control where there are inconsistent but unrepealed statutes dealing with the same subject matter. Lincoln Bank & Trust Co. v. Queenan, Kentucky, 344 S.W. 2d 383. 78 B.L.J. 701.

USURY

§1565. Transaction held not usurious.

Where maker gave notes as advance payment for dental services and as accommodation to dentist and where dentist discounted notes with bank at a rate which would have been usurious on an original issue, bank was entitled to judgment against maker because notes were not made merely to accommodate a payee to obtain funds but also as a payment pursuant to a contract. American Trust Co. v. Glassman, 207 N.Y. Supp. 2d 128. 78 B.L.J. 265.

§1583. Penalties for usury.

In suit by bank on note, corporation was precluded from raising defense of usury and this was true in spite of fact that banking institutions are subject to penalties under New York Banking Law for taking interest in excess of 6%. Central Trust Co. v. Simmons Motor Corp., 215, N.Y. Supp. 2d 555. 78 B.L.J. 811.

§1589. Conflict of laws.

In interpleader action by maker of note against payee and holder, court held that note could not be attacked as usurious if it was valid under the law of any jurisdiction having appropriate contacts with it and that it was valid under the law of Alabama, the place of payment. Crylon Steel Co. v. Globus, N.Y., 185 F. Supp. 757. 78 B.L.J. 62.

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